

litigation. It will allow States to stop spending money on litigation and put money in essential services, such as being able to make available prescription drugs to their citizens.

I hope my colleagues will join in support of this bipartisan—tripartisan—amendment this evening and send a message that we support our States and we support their right to be involved in putting together efforts to lower prices and make lifesaving medicine available to their citizens.

I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Ms. STABENOW. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that the cloture vote on Executive Calendar No. 825, Richard Clifton to be United States Circuit Court Judge, occur immediately following the disposition of Senator STABENOW's amendment. I further ask unanimous consent that following the confirmation of Judge Clifton, the Senate move to proceed to the nomination of Richard Carmona to be United States Surgeon General; that following the filing of cloture on the nomination, the Senate resume legislative session; that the live quorum for that cloture vote be waived, and that the cloture vote on the Carmona nomination occur on Tuesday, July 23, at 10:30 a.m.; and that the preceding all occur without any intervening action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Madam President, there is also the possibility of a third vote this evening on confirmation following the two votes previously announced in this unanimous consent agreement.

#### VOTE ON AMENDMENT NO. 4305, AS MODIFIED

Mr. REID. We are now ready to proceed to the Stabenow amendment. Have the yeas and nays been ordered on Stabenow?

Mr. GREGG. Yes.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to amendment No. 4305, as modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Ms. CANTWELL). Are there any other Senators in the chamber desiring to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 182 Leg.]

#### YEAS—56

Akaka	Dorgan	Lincoln
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Rockefeller
Carnahan	Hutchinson	Sarbanes
Carper	Inouye	Schumer
Chafee	Jeffords	Smith (OR)
Cleland	Johnson	Snowe
Clinton	Kennedy	Specter
Collins	Kerry	Stabenow
Conrad	Kohl	Torricelli
Corzine	Landrieu	Voinovich
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	

#### NAYS—43

Allard	Enzi	Murkowski
Allen	Fitzgerald	Nelson (NE)
Bennett	Frist	Nickles
Bond	Gramm	Roberts
Breaux	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Campbell	Hutchison	Stevens
Cochran	Inhofe	Thomas
Craig	Kyl	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Warner
Domenici	McCain	
Ensign	McConnell	

#### NOT VOTING—1

Helms

The amendment (No. 4305), as modified, was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE. Madam President, there are two additional votes. I ask unanimous consent that they be 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Madam President, I would like everybody to stay right here. At the end of 10 minutes, we will go to a third vote. That will be the last vote for the week. I appreciate everybody's cooperation in staying here and voting, and staying here for the second of the two votes. Then we will be finished for the evening.

#### EXECUTIVE SESSION

#### NOMINATION OF RICHARD R. CLIFTON, OF HAWAII, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

##### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 825, the nomination of Richard R. Clifton, to be United States Circuit Judge for the Ninth Circuit.

Jeff Bingaman, Patrick Leahy, Daniel Inouye, Harry Reid, Tom Daschle, Dianne Feinstein, Orrin Hatch, Chuck Grassley, Michael B. Enzi, Craig Thomas, Christopher Bond, Jeff Sessions, Jon Kyl, Rick Santorum, Pat Roberts, Trent Lott.

The PRESIDING OFFICER. Under the previous order, the quorum call is waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 825, the nomination of Richard R. Clifton of Hawaii, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Iowa (Mr. HARKIN) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 97, nays 1, as follows:

[Rollcall Vote No. 183 Ex.]

#### YEAS—97

Akaka	Dorgan	McConnell
Allard	Durbin	Mikulski
Allen	Edwards	Miller
Baucus	Ensign	Murkowski
Bayh	Enzi	Murray
Bennett	Feingold	Nelson (FL)
Biden	Feinstein	Nelson (NE)
Bingaman	Fitzgerald	Nickles
Bond	Frist	Reed (RI)
Boxer	Graham	Reid (NV)
Breaux	Gramm	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sarbanes
Byrd	Hatch	Schumer
Campbell	Hollings	Sessions
Cantwell	Hutchinson (AR)	Shelby
Carnahan	Hutchison (TX)	Smith (NH)
Carper	Inhofe	Smith (OR)
Chafee	Inouye	Snowe
Cleland	Jeffords	Specter
Clinton	Johnson	Stabenow
Cochran	Kennedy	Stevens
Collins	Kerry	Thomas
Conrad	Kohl	Thompson
Corzine	Kyl	Thurmond
Craig	Landrieu	Torricelli
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wellstone
DeWine	Lincoln	Wyden
Dodd	Lott	
Domenici	Lugar	

#### NAYS—1

McCain

#### NOT VOTING—2

Harkin Helms

The PRESIDING OFFICER. On this vote, the yeas are 97, the nays are 1. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. With today's vote, the Senate will confirm its 11th judge to our Federal Courts of Appeals and our 59th judicial nominee since the change in Senate majority little more than

one year ago. The Senate confirmed the first Court of Appeals judge nominated by President Bush on July 20 last year and now, less than one year later we are confirming the 11th. That is almost one per month.

By contrast, the Republican majority that preceded us averaged seven Court of Appeals confirmations every 12 months. During an entire session of Congress, 1996, the Republican majority allowed no circuit court nominees to be confirmed, not one. The Republican majority confirmed 46 Court of Appeals judges in 78 months. While they were in the majority vacancies on the Courts of Appeals more than doubled, going from 16 to 33. Since the change in majority the numbers are going in the right direction—vacancies are going down and confirmations have significantly increased. We would be doing even better with a little cooperation from the Administration and the Republican leadership, which created roadblocks to the consideration of all judicial nominations by the full Senate since May.

The nominee voted on today, Richard Clifton, was one of the 78 nominees to receive a hearing in the first year since the reorganization of the Judiciary Committee on July 10, 2001. In that period, we held more hearings for more circuit court nominees than in any of the prior six years of Republican control. In fact, we have had hearings for more judicial nominees in the past year than in 20 of the last 22 years under Republican or Democratic presidents. Those who wish to paint the Senate as obstructionist ignore the facts and the fair treatment by the Senate of President Bush's judicial nominees. They focus instead on the most controversial nominees who do take more time, rather than the vast majority who have received hearings and been confirmed in bipartisan votes of the Senate. They would rather use misleading percentage calculations that obscure the fact that the Democratic-led Senate is considering President George Bush's nominees at one of the fastest paces in recent history.

I commend Senators Inouye and Akaka for the statesmanship they have shown in connection with this nomination. I remember very well their important efforts to establish the Hawaii seat on the Ninth Circuit and to try to fill it with a qualified nominee. I voted with them and supported their effort to ensure that every State, even States as small as Hawaii and Vermont, are represented on our Courts of Appeals.

I recall the saga of the nomination of James Duffy to fill the Hawaii seat on the Ninth Circuit, how hard they worked to find a consensus nominee and how that nomination was stalled for years. Despite the "Well Qualified" rating he received from the ABA and the strong support of both his home-state Senators, Mr. Duffy never received a hearing or a vote. He was nominated at the beginning of 1999 and remained pending for over two full years

until it was withdrawn by President Bush in March 2001 without any Senate action of any kind.

Despite that recent history, the Hawaii Senators support Mr. Clifton for that same vacancy. In contrast to the treatment that Mr. Duffy received, Mr. Clifton's nomination was scheduled for a hearing less than 60 days after his file and paperwork were completed. Mr. Duffy waited 791 days and never got a hearing. When partisan critics charge Democrats with tit-for-tat and seeking revenge, they ignore the facts. The confirmation of Richard Clifton is another example of Democrats treating President Bush's judicial nominees far better than Republicans treated President Clinton's.

Today's vote on Mr. Clifton's nomination should provide some relief to the Ninth Circuit, which has four vacancies that have been classified as "judicial emergency" vacancies by the U.S. Courts. Two of those vacancies are more than five years old. They date back to 1996 and 1997, and there were two outstanding nominees to those seats. I have mentioned the nomination of James Duffy. The other nominee was Barry Goode of California, whose nomination also languished for years without ever getting a hearing or a vote.

When Barry Goode was first nominated to a Ninth Circuit vacancy in 1998 it was already a judicial emergency. Both of his home-state Senators supported the nomination but the Republican leadership refused to act. Mr. Goode was nominated not once, not twice, but three times to the Ninth Circuit and he never was given the courtesy of a hearing or a vote during almost 1,000 days (998 days). In March of 2001, President Bush withdrew Mr. Goode's nomination but he has not nominated anyone to this judicial emergency vacancy. It remains one of a number of judicial emergency vacancies for which there is no nominee and one of the 43 judicial vacancies for which there is no nominee.

The Ninth Circuit vacancies are a prime and unfortunate legacy of the partisan obstructionist practices during the Republican control of the Senate. Some are now complaining that a few nominees are waiting a year for hearing. Even though the anniversary of the reorganized Judiciary Committee with a Democratic majority was July 10, and we have already held hearings for 16 Court of Appeals nominees among the 78 total judicial nominees who had hearings in our first year.

I also recall how all confirmations to the Ninth Circuit from California were stalled by the demands of a Republican Senator not from that State to be given the ability to name a Court of Appeals judge from his State. With the support of the Republican leadership in the Senate, that Republican Senator succeeded in getting President Clinton to accord him that prerogative in order to break that logjam.

Just as the May 9th hearing on Mr. Clifton's nomination was the first

hearing on a Ninth Circuit nominee in two years, earlier this year we had the first hearing for a Sixth Circuit nominee, Judge Gibbons, in almost five years. Similarly, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years. When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in six years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

Large numbers of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session. Democrats have broken with that recent history of inaction.

I would like to commend in particular the Senators from Hawaii and also the members of the Judiciary Committee for their efforts to consider scores of judicial nominees for whom we have held hearings and on whom we have had votes during the last several months.

Mr. HATCH. Madam President, I rise to support the nomination of Richard R. Clifton to be U.S. Circuit Court Judge for the Court of Appeals for the Ninth Circuit. Before I speak directly about him and his nomination, however, I would like to take just a moment to make a few comments about the Ninth Circuit.

I think it's safe to say that everyone in the Senate agrees that the Ninth Circuit decision in *Newdow v. U.S. Congress*, striking down the Pledge of Allegiance as unconstitutional because it contains the phrase under God, was out of the mainstream of American jurisprudence. After all, the Senate voted 99 to 0 to reaffirm the reference to One Nation Under God in the pledge of allegiance—right after the decision was announced.

But to me, the decision was more than wrong. It was an outrageous example of judicial activism and overreaching—of inappropriate, results-oriented policymaking from the bench. And it is a clear example of how the Ninth Circuit is failing to serve the best interests of the western states of California, Arizona, Nevada, Idaho, Montana, Washington, Oregon, Alaska, and Hawaii.

The Ninth Circuit has 28 authorized judgeships. There are 23 active judges,

and thus 5 vacancies. Seventeen of those 23 were appointed by Democrat Presidents—14 by President Clinton alone—and only 6 were appointed by Republicans.

The Administrative Office of United States Courts has labeled all five vacancies on the Ninth Circuit as “judicial emergencies” given the enormous per-judge caseload on the Ninth Circuit.

The Ninth Circuit takes several months longer than other circuits to dispose of cases. The average time from filing to disposition is approximately 14 months.

In addition, as is well known and has been widely observed, including by several Supreme Court Justices, the Ninth Circuit has often decided cases in a manner that is well outside the mainstream of American law and entirely inconsistent with binding Supreme Court precedent. In 1999–2000, the Supreme Court considered 10 Ninth Circuit cases and reversed 9 of them. In 1998–99, the Supreme Court considered 18 Ninth Circuit cases and reversed 14 of them. In 1997–98, the Supreme Court considered 17 Ninth Circuit cases and reversed 13 of them. And in 1996–97, in an extraordinary Term, the Supreme Court considered 28 cases from the Ninth Circuit and reversed 27 of them.

All of this makes clear why it is so important for the Senate to consider—and confirm—President Bush’s nominees to the Ninth Circuit. We have two excellent candidates pending in the Judiciary Committee right now.

Judge Carolyn Kuhl has extensive experience in federal and state government, in the Executive and Judicial Branches, in public service and private legal practice. She has a superb legal background and broad experience that makes her ideally suited to be an excellent circuit judge. And the same goes for Jay Bybee, who currently serves as Assistant Attorney General for the Office of Legal Counsel at the U.S. Department of Justice. I urge the Judiciary Committee to hold hearings on these nominees without further delay.

Now, I would like to turn to the matter directly at hand, the confirmation of Richard R. Clifton to the Ninth Circuit Court of Appeals. Shortly following graduation from Yale Law School, Mr. Clifton moved to Hawaii to clerk for the Honorable Herbert Y.C. Choy of the U.S. Circuit of Appeals for the Ninth Circuit, the first and only Hawaiian to serve on that court. Notably, Mr. Clifton will be the second.

After his clerkship, Mr. Clifton joined the Honolulu law firm of Cades Schuttle Fleming & Wright, one of the oldest and largest firms in Hawaii. He has remained with that firm since then, becoming a partner in 1982. His practice has focused on business and commercial litigation, with an emphasis on complex litigation and appellate practice.

Mr. Clifton has ably handled cases in the areas of condemnation, tax law, se-

curities transactions, class actions, debtor/creditor law, and trademarks.

Mr. Clifton is the sold male director with the Hawaii Women’s Legal Foundation, a member of the Hawaii Women Lawyers, a member of the Hawaii Chapter of the American Judicature Society, and director of the Ninth Judicial Circuit Historical Society.

For approximately ten years, Mr. Clifton was an adjunct professor at the University of Hawaii William S. Richardson School of Law, where he taught appellate advocacy. He served as Chairman of Hawaii Public Radio for five years and remains a director and member of its executive committee. He has served as pro bono general counsel to the Hawaii Republican Party since 1991.

Mr. Clifton has a reputation for excellence. Among other honors, Mr. Clifton was named as one of the 18 finest lawyers in Hawaii for business litigation in 2001. He is widely respected by the legal community in Hawaii.

I proudly join my distinguished colleagues from Hawaii, Senators INOUE and AKAKA, in supporting Mr. Clifton’s nomination to the Ninth Circuit Court of Appeals, and I urge my colleagues to do the same. Richard Clifton will serve well on the federal bench in Hawaii.

Mr. AKAKA. Mr. President, I rise today in support of the nomination of Mr. Rick Clifton to the United States Court of Appeals for the Ninth Circuit.

I commend our Majority Leader, the Deputy Majority Leader, and the Chairman of the Judiciary Committee for the progress made on judicial nominations during the 107th Congress. Hawaii has waited a number of years for Senate confirmation of a Hawaii resident for a position on the U.S. Court of Appeals for the Ninth Circuit.

In 1995, I introduced legislation to require representation on the court from each State within the jurisdiction of the court. We have waited many years for this opportunity. I am pleased that Hawaii will finally have a Justice on the Ninth Circuit.

Rick Clifton has had a distinguished legal career. The Hawaii State Bar Association found him to be highly qualified for this position. A graduate of Princeton University, he received his juris doctorate from Yale Law School in 1975. Mr. Clifton has practiced law in Hawaii since 1975 and has been a partner with the law firm of Cades Schutte Fleming & Wright in Honolulu, HI, since 1982. He has extensive legal experience in civil litigation, primarily business and commercial litigation. I believe he will be an asset to the Court of Appeals for the Ninth Circuit and urge my colleagues to support his nomination.

The confirmation of Mr. Clifton will help to alleviate hardships confronting the Ninth Circuit brought about by four long-term vacancies on the Court. A number of these vacancies date back over five years, spanning a period where the previous Senate majority refused to act on these judicial emer-

gencies despite President Clinton’s nominations of several well-qualified individuals supported by their home-state Senators and local legal communities.

I congratulate and commend Chairman LEAHY for his leadership in working to confirm qualified nominees to the Federal bench and rectify the doubling in circuit court vacancies that occurred between 1995 and 2001. In this instance, the Judiciary Committee scheduled a hearing on Mr. Clifton’s nomination less than 60 days after his file and paperwork were completed. As both Chairman and Ranking Member, Senator LEAHY has worked with Senator INOUE and me to fill the Hawaii seat on the Ninth Circuit. I appreciate his commitment to ensure that every State is represented on our Courts of Appeals.

As the Chairman recently noted, Mr. Clifton’s confirmation concludes a long and regrettable saga in confirming a qualified nominee from Hawaii. In 1999, the President nominated James Duffy of Hawaii to the Ninth Circuit. He was selected after an exhaustive screening process, following an admirable effort by the White House to consult widely with political, legal, and community leaders in Hawaii. Mr. Duffy was endorsed as “the best of the best” by the Hawaii State Bar Association. Despite his sterling reputation, the nomination languished for 791 days in the Judiciary Committee without ever receiving a hearing. Mr. Duffy is one of the well-qualified and talented men and women nominated by the President to the Ninth Circuit and other Courts of Appeals, individuals with bipartisan and home-state support whose nominations were never acted on by the Senate.

I mention this unfortunate chapter not to air past grievances, but to underscore the challenges facing the Chairman of the Judiciary Committee and the Majority Leader in bringing nominations before the Senate for action. In an exceptionally evenhanded manner, they have worked to overcome the partisanship and stalling practices that precipitated many of the judicial emergencies and vacancies some of our colleagues on the other side of the aisle have recently come to this floor to decry.

Today’s confirmation vote for Mr. Clifton’s nomination attests to the fairness that the Majority Leader and Senator from Vermont have restored to the judicial confirmation process in the past year. I thank them for their support.

Mr. LEAHY. Madam President, have the yeas and nays been ordered on the nomination?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of

Richard R. Clifton, of Hawaii, to be United States Circuit Judge for the Ninth Circuit? The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 184 Ex.]

YEAS—98

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	

NOT VOTING—2

Helms Voinovich

The nomination was confirmed.

#### NOMINATION OF RICHARD R. CARMONA, OF ARIZONA, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE

The PRESIDING OFFICER. Under the previous order, the clerk will report Executive Calendar No. 921.

The assistant legislative clerk read the nomination of Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service.

The PRESIDING OFFICER. The majority leader is recognized.

CLOTURE MOTION

Mr. DASCHLE. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 921, the nomination of Richard

H. Carmona, of Arizona, to be the Surgeon General of the Public Health Service.

Edward M. Kennedy, Debbie Stabenow, Tom Daschle, Harry Reid, Jack Reed, Richard J. Durbin, Barbara Mikulski, Patrick Leahy, Jean Carnahan, Tom Carper, Byron L. Dorgan, Paul Wellstone, Jon Corzine, Jeff Bingaman, Daniel Inouye, Kent Conrad.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

#### GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

AMENDMENT NO. 4309

(Purpose: To amend title XXIII of the Social Security Act to provide coverage of outpatient prescription drugs under the medicare program)

Mr. GRAHAM. Madam President, I send to the desk an amendment, which reflects the contents of S. 2625, the Medicare Outpatient Prescription Drug Act of 2002.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM], for himself, Mr. MILLER, Mr. KENNEDY, and Mr. CORZINE, proposes an amendment numbered 4309.

Mr. GRAHAM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

AMENDMENT NO. 4310

(Purpose: To amend title XVIII of the Social Security Act to provide for a medicare voluntary prescription drug delivery program under the medicare program, to modernize the medicare program, and for other purposes)

Mr. HATCH. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. GRASSLEY, for himself, Ms. SNOWE, Mr. JEFFORDS, Mr. BREAUX, Mr. HATCH, Ms. COLLINS, Ms. LANDRIEU, Mr. HUTCHINSON, and Mr. DOMENICI, proposes an amendment numbered 4310.

Mr. HATCH. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. GRAHAM. Madam President, this amendment represents the essence of S. 2625, which currently, in addition to those who cosponsored this amendment, has 29 other colleagues' sponsorship.

This legislation is designed to provide to American seniors affordable,

comprehensive, and reliable universal prescription drug coverage. This coverage will be available to 39 million older Americans and disabled citizens who are covered by Medicare—citizens who voluntarily elect to participate in this new Medicare benefit. More than 2,750,000 of those 39 million live in my State of Florida and, as have citizens across America, been waiting year after year after year for Congress to finally deliver on the commitment that we have made to modernize Medicare through the provision of a prescription drug benefit.

When I made remarks on this issue on Tuesday of this week, I based those remarks on six principles that I believe should be the touchstone for an affordable, comprehensive universal prescription drug benefit for senior Americans. Let me briefly reiterate those six principles.

First, we must modernize the Medicare Program. We must bring Medicare into the 21st century. In my judgment, the provision of a prescription drug benefit is the single most important reform of the Medicare Program that we can make. Why is this benefit so central? Because in the 37 years since the Medicare Program was created, the practice of medicine has been fundamentally altered by the use of prescription drugs.

Prescription drugs have improved the quality of people's lives. They have reduced long recovery periods, and they sometimes can even avoid surgeries and disabling illnesses, such as strokes and heart attacks.

We must convert Medicare from a program which, since its inception in 1965, has focused on sickness. If you are sick enough to go to the doctor or to the hospital, Medicare will pay 77 percent, on average, of your costs. But if you want to maintain the highest level of health, which generally involves screening, early intervention, and prescription drugs to monitor the condition, Medicare will pay nothing.

Medicare must be converted from a sickness program to a wellness program if it is to serve the needs of senior Americans in the 21st century. That is the first principle.

The second principle is that beneficiaries must be provided with a real benefit. To be successful, this program must attract a wide variety of beneficiaries.

The program will be voluntary, so it must attract enrollment with reasonable and reliable prices and a benefit that pays off from day one. In this manner, we will be able to attract all seniors, from those who today have high drug needs to those who are healthy but might be concerned that they, too, could be struck down with a heart attack or other disabling condition.

If we are able to have a program that will attract that broad range of elderly in terms of their current state of health, then we will have a program that will be actuarially solid for years to come.